

BILL NO. S-97-05- 24

SPECIAL ORDINANCE NO. S-56-97

AN ORDINANCE approving Contract 97-XP-01, Rothman Road/Young Road Water Main Extension between All Star Construction & Excavating and the City of Fort Wayne, Indiana, in connection with the Board of Public Works.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the Contract by and between All Star Construction & Excavating and the City of Fort Wayne, Indiana, in connection with the Board of Public Works, is hereby ratified, and affirmed and approved in all respects, respectfully for:

The furnishing of all labor, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary to construct 6,600+/- L.F. of 16" Ductile Iron water main and appurtenances, and 800 L.F. of 15" HPDE storm sewer as follows:

Beginning at the existing hydrant located on the north side of Rothman Road approximately 1340 L.F. west of the intersection of Rothman Road and Young Road; thence 1315 L.F. east along the north side of Rothman Road to a tee in the northwest corner of the Rothman Road and Young Road intersection; thence continuing east 4075 +/- L.F. along the north side of Rothman Road to the end of the Rothman Road Water Main Extension; thence continuing north from the tee, 1215 L.F. along the west side of Young Road to the site of the proposed Northeast Elevated Storage Tank.

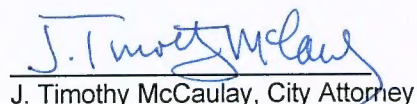
involving a total cost of Two Hundred Eighty Two Thousand Nine Hundred Thirty Five and 20/100 Dollars (\$282,935.20).

Two copies of said Contract are on file with the Office of the City Clerk and made available for public inspection, according to law.

SECTION 3. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

  
Council Member

APPROVED AS TO FORM  
AND LEGALITY

  
J. Timothy McCaulay, City Attorney

Read the first time in full and on motion by Bender,  
and duly adopted, read the second time by title and referred to the Committee on  
City of Fort Wayne, (and the City Plan Commission for recommendation)  
and Public Hearing to be held after due legal notice, at the Common Council Conference  
Room 128, City-County Building, Fort Wayne, Indiana, on  
the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_  
o'clock \_\_\_\_\_ M., E.S.T.

DATED: 5-27-97

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Bender,  
and duly adopted, placed on its passage. PASSED LOST  
by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	<u>6</u>			<u>3</u>
BENDER	<u>✓</u>			
CRAWFORD	<u>✓</u>			
EDMONDS				<u>✓</u>
HALL	<u>✓</u>			
HAYHURST	<u>✓</u>			
HENRY				<u>✓</u>
LUNSEY				<u>✓</u>
RAVINE	<u>✓</u>			
SCHMIDT	<u>✓</u>			

DATED: 6-10-97

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana,  
as (ANNEXATION) (APPROPRIATION) (GENERAL) (SPECIAL)

(ZONING)

ORDINANCE

RESOLUTION NO.

5-56-97

on the

10<sup>th</sup>

day of

June

, 1997

ATTEST:

SEAL

Sandra E. Kennedy

SANDRA E. KENNEDY, CITY CLERK

Rebecca Prairie

PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the  
11<sup>th</sup> day of June, 1997,  
at the hour of 1:30 o'clock P, M., E.S.T.

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 13<sup>th</sup> day  
of June, 1997, at the hour of 9:00  
o'clock A M., E.S.T.

Paul Helmke  
PAUL HELMKE, MAYOR



**ROTHMAN ROAD/YOUNG ROAD WATER MAIN EXTENSION**

Board Order 3-97

Contract 97-XP-01

Work Order 64619

**THIS CONTRACT** made and entered into in triplicate this 21 day of MAY, 1997, by and between **ALL STAR CONSTRUCTION & EXCAVATING** herein called **CONTRACTOR**, and the **CITY OF FORT WAYNE, INDIANA**, an Indiana Municipal Corporation, acting by and through the **MAYOR** and the **Board of Public Works**, herein called **OWNER**;

**WITNESSETH**, that the **CONTRACTOR** and the **OWNER**, for the considerations hereinafter named, agree as follows:

**ARTICLE 1: SCOPE OF WORK**

**CONTRACTOR** shall furnish all labor, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for the following:

To construct 6,600± L.F. of 16" Ductile Iron water main and appurtenances, and 800± L.F. of 15" HDPE storm sewer as follows:

Beginning at an existing hydrant located on the north side of Rothman Road approximately 1340 L.F. west of the intersection of Rothman Road and Young Road; thence 1315 L.F. east along the north side of Rothman Road to a tee in the northwest corner of the Rothman Road and Young Road intersection; thence continuing east 4075 L.F. along the north side of Rothman Road to the end of the Rothman Road Water Main Extension; thence continuing north from the tee, 1215 L.F. along the west side of Young Road to the Site of the proposed Northeast Elevated Storage Tank.

in accordance with the specifications and Drawing No.Y-10714, Sheets G1 of 10 through C8 of 10 prepared by Samuel L. Moore & Associates, Inc. for the City of Fort Wayne, and do everything required by this contract and the other documents constituting a part hereof.

**ARTICLE 2: THE CONTRACT SUM**

The **OWNER** shall pay **CONTRACTOR** for the performance of the contract the unit price sum of \$282,935.20. In the event the amount of work is increased or decreased by **OWNER**, the contract sum shall be increased or decreased according to the unit price schedule set forth in the **CONTRACTOR'S** Proposal.

**ARTICLE 3: PROGRESS PAYMENTS AND RETAINAGE**

The **CONTRACTOR** may submit requests for payments no more often than every thirty (30) days for work performed and accepted under the contract. If the contractor is in compliance with the provisions of the contract, the Board will make payments for such work performed and completed. However, in any such case, the Board will retain ten percent (10%) of the total amount owing to insure contractor's compliance with the E.B.E. Rider attached to this contract. Payments to the contractor are not to exceed 90% of the total contract amount until the **OWNER** has verified that the **CONTRACTOR** has made good faith efforts to attain the E.B.E. goal stipulated in the E.B.E. Rider attached hereto.

If the contract is in excess of \$100,000, the contract will be subject to the standard Board of Public Works escrow agreement. However, payment of the final **10%** of the total contract amount will be dependent upon good faith efforts to comply with the E.B.E. Rider, and subject to appropriate reduction in the event of non-compliance, as provided in paragraph 6 of the E.B.E. Rider attached hereto.

#### **ARTICLE 4: ACCEPTANCE AND FINAL PAYMENT**

Final payment shall be due at the time the work is fully completed and accepted and the contract, including the E.B.E. rider, is fully performed. Payments to the **CONTRACTOR** are not to exceed **90%** of the total contract amount until the **OWNER** has verified that the **CONTRACTOR** has made good faith efforts to attain the E.B.E. goal stipulated in the E.B.E. Rider attached hereto.

Upon filing of a **Completion Affidavit** by the **CONTRACTOR** that the work is ready for final inspection and acceptance, the **Board of Public Works** will direct the **Engineering Department** of the **OWNER** to promptly make such inspection, and will direct the **CONTRACT COMPLIANCE DEPARTMENT** of the **OWNER** to make a final recommendation on whether the **CONTRACTOR** made good faith efforts to attain the E.B.E. goal stipulated in the E.B.E. Rider.

When the **Engineering Department** finds the work acceptable under the contract, and the contract is fully performed, it shall so inform the **Board of Public Works**. Likewise, when the **Contract Compliance Department** determines that the **CONTRACTOR's** efforts constitute good faith efforts to attain the E.B.E. goal as agreed in the E.B.E. Rider, it shall so inform the Board of Public Works through an E.B.E. Compliance Final Report.

Upon receiving both the **Engineering Department's** and the **Contract Compliance Department's** recommendations, the Board of Public Works shall issue a final certificate stating that the work provided for in this Contract has been completed and is accepted, and further stating that the E.B.E. Rider goal has been met. Thereupon, the entire balance of the Contract sum shall be due and payable to the **CONTRACTOR**; provided only that **CONTRACTOR** shall first furnish **OWNER**, if requested to do so, satisfactory evidence that all persons who have supplied labor, material, or equipment for the work have been fully paid, and all required manpower utilization reports for this project have been submitted.

In the event that the **Board of Public Works** determines that good faith compliance with the E.B.E. Rider has not occurred, appropriate reduction in the final payment will be made, pursuant to paragraph 6 of the E.B.E. Rider attached hereto. Said amount shall be added to the **City of Fort Wayne E.B.E. Bond Guarantee Fund** and the contractor agrees to accept the reduced amount as full payment under the terms of his/her contract.

If the contract is in excess of \$100,000, the contract will be subject to the standard Board of Public Works escrow agreement. However, payment of the final **10%** of the total contract amount will be dependent upon good faith efforts to comply with the E.B.E. Rider, and subject to appropriate reduction in the event of non-compliance, as provided in paragraph 6 of the E.B.E. Rider attached hereto.

## **ARTICLE 5: WORKMEN'S COMPENSATION ACT**

The **CONTRACTOR** will furnish immediately a certificate from the **Industrial Board of the State of Indiana**, that he has complied with the **Workmen's Compensation Act** in accordance with Statutes of the State of Indiana and Ordinances of the City of Fort Wayne.

Any judgment rendered against the **City of Fort Wayne** in any suits for Damages for injury to real or personal property, or for injury sustained by any person growing out of any act or doing of **CONTRACTOR**, or its agents, employees or workmen or any judgment of any court or award of any **Board of Arbitrators** or of the **Industrial Board of the State of Indiana** rendered against the **City of Fort Wayne** in any suit or claim arising under said **Workmen's Compensation** for accidental injuries or death suffered by his employees or the employees of any Subcontractor(s) in the course of their employment, when notice of the pendency of such suit, hearing or arbitration shall have been given said **CONTRACTOR**, shall be conclusive against **CONTRACTOR** as to amount, liability and all other things pertaining thereto; it being the intent of the parties hereto that **CONTRACTOR** indemnify and hold harmless **OWNER** in the premises.

## **ARTICLE 6: NONDISCRIMINATION OF LABOR**

The **CONTRACTOR** further agrees to be bound by **Section 15-13 (as amended)**, of the Code of the **City of Fort Wayne, Indiana** of 1974, passed by the **Common Council of the City of Fort Wayne, Indiana** as **General Ordinance No. G-34-78 (as amended)** on December 12th, 1978. The successful bidder shall file a **Manpower Utilization Report** for this project with the **Compliance Office** within ten (10) days after completion of construction or upon request of the **Office of Compliance**.

## **ARTICLE 7: WAGE SCALE**

The **CONTRACTOR** agrees to pay, and also require of his subcontractors that they pay wage rates on the work covered by this contract which shall not be less than the prescribed scale of wages as determined pursuant to the Statutes of the State of Indiana, and the **Ordinances of the City of Fort Wayne** according to the applicable wage scale ten (10) days after completion of construction or upon request of the Office of Compliance.

## **ARTICLE 8: COMPONENT PARTS OF THIS CONTRACT**

The following documents are as fully a part of the contract as if hereto attached or herein repeated:

- a. Advertisement for Bids for Contract 97-XP-01
- b. Instructions to Bidders for Contract 97-XP-01
- c. Contractor's Proposal dated March 19, 1997
- d. Fort Wayne Water Engineering Department Drawing No. Y10714
- e. Supplemental Specifications for Contract 97-XP-01
- f. Workmen's Compensation Act, Statutes of the State of Indiana and Ordinances of the City of Fort Wayne
- g. Non-Discrimination of Labor, General Ordinance Number G-34-78 (as amended)
- h. Prevailing Wage Scale
- i. Performance and Guaranty Bond.
- j. Labor and Material Payment Bond
- k. Comprehensive Liability Insurance Coverage

- l. Form 96
- m. E.B.E. Rider

#### **ARTICLE 9: GUARANTEE OF WORKMANSHIP**

At the time of execution of this contract, the **CONTRACTOR** shall furnish a **Performance and Guaranty Bond** in favor of the **City of Fort Wayne** in the amount of the total value of the materials supplied and/or work performed under the terms of this contract. The said bond shall ensure the completion of the work covered hereunder and shall guarantee the materials and workmanship for a period of one (1) year following written acceptance of the work by the **OWNER**.

#### **ARTICLE 10: INDEMNITY**

**CONTRACTOR** shall furnish to **OWNER**, within ten (10) days of the date hereof, a certificate from an insurer acceptable to **OWNER** showing personal injury and property damage insurance, in force and issued in connection with the work to be performed under this Contract, in amounts satisfactory to **OWNER** and in accordance with the **Statutes of the State of Indiana**.

#### **ARTICLE 11: ADJUSTMENTS OF DISPUTES**

All questions or controversies which may arise between the **CONTRACTOR** and the **OWNER** under the provisions of this Contract shall be subject to the decision of the **Director of Board of Public Works** of the **OWNER**, and his decision shall be final and conclusive upon the parties. Provided, however, no changes in the plans, specifications, or other phases of work covered by this Contract will be permitted except on prior written authorization by the **Board of Public Works**.

#### **ARTICLE 12: COMPLETION DATE**

The **CONTRACTOR** agrees to complete the work specified in the contract within **120 consecutive calendar days** after having been ordered by the **OWNER** to commence work under this contract.

#### **ARTICLE 13: COUNCILMANIC APPROVAL**

This Agreement, although executed on behalf of the **OWNER** by the **Mayor and Board of Public Works** of the **City of Fort Wayne, Indiana**, shall not be binding upon the **OWNER** unless and until the same shall have been ratified and approved by the **Common Council** of the **City of Fort Wayne, Indiana**, and should said **Common Council** fail to approve the same within ninety (90) days after the date hereof, then this Contract shall be and become wholly void.

#### **ARTICLE 14:**

This contract is governed by Laws of the State of Indiana.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

CONTRACTOR  
ALL STAR CONSTRUCTION &  
EXCAVATING

BY:

  
ED FOSS, PRESIDENT

CITY OF FORT WAYNE

BY:

PAUL HELMKE, MAYOR

BOARD OF PUBLIC WORKS

BY:

  
LINDA BUSKIRK, CHAIRMAN

BY:

C. JAMES OWEN, MEMBER

BY:

JOHN STAFFORD, MEMBER

ATTEST:

  
PATRICIA J. CRICK, CLERK

APPROVED AS TO FORM AND LEGALITY BY:

ASSOCIATE CITY ATTORNEY

THIS DOCUMENT PREPARED BY: TIM A. WARREN, MANAGER OF WATER  
ENGINEERING

ACKNOWLEDGEMENT

STATE OF INDIANA)

SS:

COUNTY OF ALLEN)

BEFORE ME, a Notary Public, in and for said County and State, this 13<sup>th</sup> day of *May*, 1997, personally appeared the within named **ED FOSS** who being by me first duly sworn upon his oath says that he is the **PRESIDENT** of **ALL STAR CONSTRUCTION & EXCAVATING** and as such duly authorized to execute the foregoing instrument for the uses and purposes therein set forth.

IN WITNESS WHEREOF, hereunto subscribed my name, affixed my official seal.

*Teresa A Miller*

Notary Public

*TERESA A MILLER*

Printed Name of Notary

My Commission Expires: *MARCH 4, 2000*

Resident of *ALLEN* County.

### E.B.E. RIDER

**THIS AGREEMENT** made and entered into by and between the **CITY OF FORT WAYNE**, hereinafter referred to as **OWNER** and **ALL STAR CONSTRUCTION & EXCAVATING**, hereinafter referred to as **CONTRACTOR**,

**WITNESSETH:**

**WHEREAS**, the **CONTRACTOR** is the apparent low bidder on construction project commonly referred to as the Northeast Tank Telemetry System, which project was bid under **Water Contract Number 97-XP-01**; and

**WHEREAS**, **CONTRACTOR** agrees that the goal for qualified Emerging Business Enterprises, hereinafter sometimes referred to as **E.B.E.'s** as subcontractors on this project is **10%** of the contract amount; and

**WHEREAS**, **OWNER** has, pursuant to Executive Order 90-01 (as amended 12-19-91), adopted a goal of at least **10%** of the contract amount to Emerging Business Enterprises as defined under said Executive Order (as amended 12-19-91); and

**WHEREAS**, said Executive Order (as amended 12-19-91) states:

"Section 2, Paragraph C. Each contractor shall be required to make a good faith effort to subcontract 10% of the contract amount to Emerging Business Enterprises on each construction contract he/she is awarded. In the event a contractor is unable to subcontract 10% of the contract amount or secure services of an Emerging Business Enterprise, he/she will be required to submit a completed Request for Waiver form on which he/she will provide a written description of the efforts taken to comply with the participation goals."

**NOW, THEREFORE**, in consideration of the foregoing and of the mutual agreements hereinafter contained, the sufficiency of which consideration is hereby acknowledged, the parties hereto agree as follows:

1. Conditional Award - Subject to approval by the Common Council of the City of Fort Wayne as stipulated in the construction contract to which this Rider is attached, **OWNER** awards the construction contract to the **CONTRACTOR**.
2. E.B.E. Retainage requirements - If the contractor is in compliance with the provisions of the construction contract to which this Rider is attached, the Owner will make payments for such work performed and completed. However, in any such case, the Owner will retain ten percent (10%) of the total amount owing to insure compliance with this E.B.E. Rider. Upon final inspection and acceptance of the work, and determination by the Fort Wayne Board of Public Works that the contractor has made a good faith effort to subcontract ten percent (10%) of the contract amount to emerging business enterprises, the contractor will be paid in full.

In the event there is a determination that good faith compliance with this E.B.E. Rider

has not occurred, appropriate reduction in the final payment pursuant to paragraph 6 of this E.B.E. Rider will be made.

If the contract is in excess of \$100,000, the contract will be subject to the standard Board of Public Works escrow agreement. However, payments to the **CONTRACTOR** are not to exceed **90%** of the total contract amount until the **OWNER** has verified that the **CONTRACTOR** has made good faith efforts to attain the E.B.E. goal stipulated in this E.B.E. Rider. Payment of the final **10%** of the total contract amount will be dependent upon good faith efforts to comply with this E.B.E. Rider, and subject to reduction in the event of non-compliance as provided in paragraph 6 of this E.B.E. Rider.

3. Request for Waiver - If, at the time final payment application is made, contractor has not attained the ten percent (10%) E.B.E. goal, contractor shall file with the final payment application a "Request for Waiver." Said Request for Waiver shall contain a written description of the efforts taken by Contractor to attain the ten percent (10%) E.B.E. goal.
4. Determination of Waiver Requests - The Contract Compliance Department of the City of Fort Wayne shall examine all Requests for Waiver to determine if Contractor's efforts constitute good faith efforts to attain such goal and shall submit recommendations concerning said requests for Waiver for the final determination of the Board of Public Works of the City of Fort Wayne.
5. Good Faith Per Se. - In any case, a Contractor shall be deemed to have made good faith efforts at compliance where E.B.E.'s have subcontracted for every sub-contract for which there are qualified E.B.E.'s available.
6. Consequence of noncompliance - In the event the Board of Public Works approves a recommendation that contractor failed to make good faith efforts at compliance, the contract shall be reduced by the amount calculated as the difference between ten percent (10%) and the percentage level met. Said amount shall be added to the City of Fort Wayne E.B.E. Bond Guarantee Fund and contractor agrees to accept the reduced amount as full payment under the terms of his/her contract.
7. Waiver approved - In the event the Board of Public Works determines that a good faith effort to comply with this E.B.E. Rider has been made, the contract shall not be reduced, and the balance owing to the contractor shall be paid in full.

IN WITNESS WHEREOF, the parties have executed the E.B.E. Rider this 21 day of  
MAY, 1997.

CONTRACTOR:  
ALL STAR CONSTRUCTION & EXCAVATING

BY: Edward F. Foss  
Ed Foss, President

BOARD OF PUBLIC WORKS:

BY: Linda Buskirk  
Linda Buskirk, Chairman

BY: C. James Owen  
C. James Owen, Member

BY: John Stafford  
John Stafford, Member

ATTEST:

BY: Patricia J. Crick  
Patricia J. Crick, Clerk

### DIGEST SHEET

TITLE OF ORDINANCE: Water Contract 97-XP-01, Rothman Road/Young Road Water Main Extension

DEPARTMENT REQUESTING ORDINANCE: Board of Public Works

SYNOPSIS OF ORDINANCE: Water Contract 97-XP-01 is for the furnishing of all labor, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary to construct 6,600± L.F. of 16" Ductile Iron water main and appurtenances, and 800 L.F. of 15" HPDE storm sewer as follows:

Beginning at the existing hydrant located on the north side of Rothman Road approximately 1340 L.F. west of the intersection of Rothman Road and Young Road; thence 1315 L.F. east along the north side of Rothman Road to a tee in the northwest corner of the Rothman Road and Young Road intersection; thence continuing east 4075± L.F. along the north side of Rothman Road to the end of the Rothman Road Water Main Extension; thence continuing north from the tee, 1215 L.F. along the west side of Young Road to the site of the proposed Northeast Elevated Storage Tank.

All Star Construction & Excavating is the Contractor.

EFFECT OF PASSAGE: Water main will be constructed.

EFFECT OF NON-PASSAGE: Water main will not be constructed.

MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS) \$282,935.20 (WATER BOND)

ASSIGNED TO COMMITTEE (PRESIDENT): \_\_\_\_\_

Hold till - 6-15-97

BILL NO. S-97-05-24

REPORT OF THE COMMITTEE ON CITY UTILITIES

MARTIN A. BENDER - CLETUS R. EDMONDS - CO-CHAIR  
ALL COUNCIL MEMBERS

WE, YOUR COMMITTEE ON CITY UTILITIES  
TO WHOM WAS REFERRED AN (ORDINANCE) (~~XXXXXXXXXX~~ RESOLUTION) approving  
Contract 97-XP-01, Rothman Road/Young Road Water Main Extension  
between All Star Construction & Excavating and the City of Fort Wayne,  
Indiana, in connection with the Board of Public Works

HAVE HAD SAID (ORDINANCE) (~~XXXXXXXXXXXXXXX~~ RESOLUTION) UNDER CONSIDERATION  
AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID  
(ORDINANCE) (~~XXXXXXXXXXXXXXX~~ RESOLUTION)

<u>DO PASS</u>	<u>DO NOT PASS</u>	<u>ABSTAIN</u>	<u>NO REC</u>
<u>Martin A. Bender</u>			
<u>Cletus R. Edmonds</u>			
<u>W. S. [Signature]</u>			
<u>Diego Hall</u>			
<u>John W. [Signature]</u>			
<u>[Signature]</u>			

DATED:

Sandra E. Kennedy  
City Clerk